

## **J U D G M E N T**

These batch of writ petitions serve as a grim reminder of the perpetual fight for control of spiritual and temporal management of affairs of the Parish Church between the Patriarch faction and the Catholicos faction of the Malankara Church. The Malankara Church is essentially a division of the Orthodox Syrian Church and the issue of spiritual and temporal authority between the Malankara Church and the Patriarch of Antioch has been the subject matter of several rounds of litigation since the year 1879.

2. The history of the earlier rounds of litigation has been succinctly referred to in the judgment of Justice B.P. Jeevan Reddy in *Most Rev. P.M.A. Metropolitan and Others v. Moran Mar Marthoma and another* [1995 Supp (4) SCC 286] as follows:

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**98.** St.Thomas, one of the disciples of Jesus Christ came to Malabar in 52 A.D. to spread his message. He died in India.

**99.** At the Council held at Nicea in 325 A.D. - First General Council - convened by the Roman Emperor Constantine, four Patriarchates were established spanning the Christendom as it was known then, viz., Rome, Constantinople, Alexandria and Antioch, each headed by a Patriarch. Within the jurisdiction of Patriarch of Antioch was established another office, viz., the great Metropolitan of the East, also known as "Catholicos". The office of Catholicate fell into disuse later and was revived in 628 A.D. Sometime later, it again fell into disuse. All these are matters of faith and are stated merely by way of introduction.

**100.** By the 16th century, Christianity had gained a fairly substantial foothold in the area now comprised in Kerala. The dominant

faith was of the Syrian Orthodox Church. 16th century saw the rise of Portuguese political power on the west Coast of India. The Portuguese were Roman Catholics. They compelled the local christians to accept Roman Catholic faith. They succeeded to some extent but not for long. In the year 1654, the Christians of Malabar rebelled against the imposition of an alien faith and affirmed their loyalty to Syrian Orthodox Church headed by the Patriarch by taking an oath en masse at Mattancherry, known as the "Koonan Cross Oath". Since then the Patriarch of Antioch was exercising ecclesiastical supremacy over what may be called the "Malankara Syrian Christian Church". With the rise of the British power in the Southern India during the 19th century, they in turn pressurised the Malankara Syrian Christian Community to embrace the Protestant faith. They too succeeded in some measure. Disputes arose between the two groups (one that embraced the Protestant faith and the other adhering to the Orthodox faith), which was settled by an award called "Cochin Award" rendered on April 4, 1840. As per this award, the Church properties were divided between the Church Mission Society (Protestants) and the Malankara Jacobite Syrian Church (Orthodox faith). The amount of 3,000 Star Pagodas deposited by Mar Thoma VI (Dionysius the Great) with the East Indian Company at eight percent interest came to be allotted to Malankara Jacobite Syrian Church in this division.

**101.** On account of certain disputes and bickerings between the members of Malankara Jacobite Syrian Church, Patriarch Peter III of Antioch came to Malabar in 1876. He called a meeting of the accredited representatives of all Churches in Malabar which is known as the "Mulanthuruthy Synod". At this Synod, Malankara Syrian Christian Association, popularly called the "Malankara Association", was formed to manage the affairs of the Church and the Community. The Malankara

Metropolitan was made the ex-officio President of this Association. Each member Church was to send three representatives to the Association. A Managing Committee of twenty four, called the "Standing working Committee of the Association" was also constituted. Until 1876, the entire Malabar was comprised in one Diocese. But thereafter it was divided into seven Dioceses, each Diocese headed by a Metropolitan. One of them was to be designated as Malankara Metropolitan who exercised spiritual and temporal powers over all the Dioceses.

*Seminary Suit*

102. On 4-7-1879 Mar Joseph Dionysius claiming to be the properly consecrated Metropolitan of Malankara Jacobite Syrian Church and as the President of Malankara Association filed O.S.No.439 of 1054 in the Zilla Court of Alleppey against one Mar Thomas Athanasius. The main dispute between them was while the plaintiff asserted the supremacy of Patriarch comprised in consecrating and appointing Metropolitans from time to time to govern and rule over the Malankara Edavagai, in sending Morone (the sanctified oil) for baptismal purposes, in receiving the Ressissa (tribute) from the Community to maintain his dignity and in generally controlling the ecclesiastical and temporal affairs of the Edavagai, the defendants denied any such Patriarchal supremacy. The suit was ultimately disposed of by the judgment of Travancore Royal Court of Final Appeal in the year 1889. The Royal Court found that the ecclesiastical supremacy of the Patriarch of Antioch over Malankara Syrian Christian Church in Travancore had all along been recognised and acknowledged by Jacobite Syrian Christian Community and their Metropolitans; that the exercise of supreme power consisted in ordaining, either directly or through a duly authorised delegates, Metropolitans from time to time to manage the spiritual matters of the local Church, in sending Morone to be used in

the Churches for baptismal and other purposes and in general supervision over the spiritual government of the Church. The Royal Court further ruled that the authority of Patriarch never extended to temporal affairs of the Church which in that behalf was an independent Church. It was further declared that the Metropolitan of the Syrian Christian Church in Travancore should be a native of Malabar consecrated by the Patriarch or by his duly authorised delegate and accepted by the people as their Metropolitan. The Court found that the plaintiff was so consecrated by Patriarch and accepted by the majority of the people and, therefore, entitled to be recognised and declared as the Malankara Metropolitan and as the trustee of the Church properties.

*Arthat Suit*

103. It appears that the Patriarch of Antioch did not relish the judgment of the Royal Court of Travancore insofar as it declared that he had no control over the temporal affairs of the Malankara Church. Some local Christians supported him in that behalf which led to the institution of a suit in 1877 which resulted in the judgment of the Court of Appeal of Cochin dated 15-8-1905, re-affirming the findings of the Travancore Royal Court. The Cochin Court of Appeal declared that while the Patriarch of Antioch is the spiritual head of Malankara Syrian Jacobite Christian Church, the Churches and their properties are subject to the spiritual, temporal and ecclesiastical jurisdiction of the Malankara Metropolitan. In other words, the Patriarch's claim of control over the temporal affairs of the Malankara Church was negatived once again.

*The Revival of Catholicate in 1912*

104. The Sultan of Turkey withdrew the recognition given to

Abdul Messiah as the Patriarch of Antioch and recognised Abdulla II as the Patriarch. There is a difference of opinion as to the effect of this withdrawal of recognition by the Sultan. While one view is that this recognition resulted in Abdul Messiah ceasing to exercise any and all the powers of Patriarch, the other view is that the said withdrawal did not affect the spiritual authority of Abdul Messiah. Be that as it may, there were now two rival claimants to the Patriarchate of Antioch and as we shall presently indicate it is this dispute between Abdul Messiah and Abdulla II which led to the formation of two groups in the Malankara Church.

105. In the year 1907, Mar Geevarghese Dionysius was ordained as Metropolitan by the Patriarch Abdulla II at Jerusalem. In 1909, Mar Geevarghese Dionysius became the Malankara Metropolitan on the death of Mar Joseph Dionysius. Because of certain differences arising between Mar Geevarghese Dionysius and Abdulla II, the latter excommunicated the former on 31-3-1911. A few months later, Abdulla II appointed one Paulose Mar Kurilos as the Malankara Metropolitan. Mar Geevarghese Dionysius responded by convening a meeting of the Malankara Syrian Christian Jacobite Church which declared his excommunication as invalid. In the year 1912, Patriarch Abdul Messiah came to Malankara and declared the excommunication of Mar Geevarghese Dionysius by Abdulla II as invalid. In addition to that, Abdul Messiah also purported to revive and reestablish the Catholicate by consecrating one Mar Ivanios as the Catholicos.

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109. Mar Ivanios, who was consecrated as the Catholicos, died on 16-4-1913. Abdul Messiah died on 30-08-1915 and Abdulla II died on 25-11-1915. No one was installed as the Catholicos till 1925, when one Mar Geevarghese Philixinos of Vakathanam was installed as the

second Catholicos but without reference to the Patriarch. On the death of Mar Philixinos on 17-12-1928, Geevarghese Gregorius was installed as the third Catholicos, again without reference to the Patriarch.

### *Vattipanam Suit*

**110.** Dispute arose as to the persons entitled to the interest on 3,000 Star Pagodas aforementioned. In view of the dispute, the Secretary of State for India instituted an interpleader Suit O.S.No.94 of 1088 in the District Court, Trivandrum. It was later converted into a representative suit between two groups, viz., defendants 1 to 3 representing what may be called the Catholicos group (i.e., the group owing allegiance to the Catholicos installed by Patriarch Abdul Messiah) and defendants 4 to 6 representing what may be called the Patriarch group (i.e., the group owing allegiance only to the Patriarch). The first defendant claimed to have been appointed as Malankara Metropolitan by Abdul Messiah and disputed the validity of the Bull of excommunication issued by Abdulla II. On the other hand, defendants 4 to 6 claimed that the first defendant having been ex-communicated by the Patriarch Abdulla II, ceased to be the Malankara Metropolitan and that the fourth defendant has been validly appointed by Abdulla II as the Malankara Metropolitan in the place of the first defendant. Defendants 4 to 6 further contended that by their conduct and declarations, defendants 1 to 3 have become schismatics and hence disqualified to act as the trustees of the Church properties. The fourth defendant died pending the suit and in his place defendant No.42 was impleaded as the Malankara Metropolitan. The learned District Judge held inter alia that the first defendant is the validly appointed Malankara Metropolitan, having been accepted by the community at the installation meeting held in the year 1084. He also held that the withdrawal of recognition by the

Sultan of Turkey did not deprive Abdul Messiah of his purely spiritual functions and powers and that the ex-communication of the first defendant by Abdulla II was invalid. With these findings, the learned District Judge upheld the claim of defendants 1 to 3 to the interest amount.

111. The Patriarch group filed an appeal before the High Court of Travancore (reported in 41 T.L.R.1). A Full Bench of the High Court allowed the appeal and reversed the judgment and decree of the Trial Court and upheld the claim of defendants 4 to 6 as the true and valid trustees entitled to the said interest amount. Thereupon Defendants 1 to 3 applied for review of the said judgment. The review petition was admitted subject to the condition that the review petitioners shall not question the following three findings recorded in the judgment under review - the three findings being -

"(1) as to the authenticity of Ex. A-18, the version of Canon Law produced by defendants 5, 6 and 42.

(2) as to the power of Patriarch to ex-communicate without the intervention of the Synod; and (3) as to the absence of an indirect motive on the part of the Patriarch which induced him to exercise his power of ex-communication."

Accordingly, the appeal was re-heard by another Full Bench which by its judgment pronounced on 4-7-1928 upheld the decision of the learned District Judge and confirmed his decree.

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*Developments subsequent to the final disposal of the Vattipanam Suit*

112. After the aforesaid judgment, it appears, both the parties tried to strengthen their respective positions. On 16-8-1928 the Managing Committee of the Malankara Association was formed which

was authorised to draw a constitution for the Church and the Association. On the very next day, i.e., 17-8-1928, Mar Julius Elias, the delegate of the Patriarch who was then in Malabar, issued an order calling upon Mar Geevarghese Dionysius to execute an Udampadi (submission deed) within two days accepting the authority of the Patriarch and also suspending him for having committed several grave offences against the Holy Throne of Antioch and for having repudiated the authority of the ruling Patriarch. He addressed letters to the Governments of Travancore and Madras to withhold payment of interest to Mar Geevarghese Dionysius in view of his suspension from the office of Malankara Metropolitan.

**113.** On 21-8-1928, O.S.No.2 of 1104 was filed in the District Court of Kottayam by eighteen persons belonging to Patriarch group against Mar Geevarghese Dionysius and two others including the then Catholicos Mar Geevarghese Philixinos. Mar Geevarghese Philixinos died in 1929. Thereupon Moran Mar Basselios was impleaded as a defendant. On 23-1-1931, O.S.No.2 of 1104 was dismissed for non-compliance with certain orders regarding payment of monies to the Commissioner appointed in the suit. The application for restoration of the suit was dismissed on 29-9-1931, against which order the plaintiffs therein filed Civil Misc. Appeal No.74 of 1107 in the High Court. While the aforesaid CMA was pending in the High Court, certain developments took place which require to be noticed.

**114.** With a view to put an end to the disputes between the two rival groups in the Malankara Church, Patriarch Elias I visited Malabar in 1931 at the instance of Lord Irwin, the then Viceroy of India. Patriarch Elias I, however, died in Malabar before he could effect any settlement. In his place, one Ephraim was elected as the Patriarch of Antioch in the year



1933, but, it is said, without notice to the Malabar Community. For this reason, Mar Geevarghese Dionysius and his supporters did not recognise Ephraim as the duly elected Patriarch.

115. Mar Geevarghese Dionysius died in February, 1934 with result the trust properties passed into the possession of his co-trustees, Mani Poullose Kathanar and E.J.Joseph. Shortly thereafter, the draft constitution prepared by the Managing Committee of the Malankara Association was published in the shape of a pamphlet. On 3-12-1934 notices were issued convening a meeting of all the Churches to be held on 26-12-1934 at M.D. Seminary at Kottayam for, inter alia, electing the Malankara Metropolitan and adopting the draft constitution. Notices were also published in two leading Malayalam newspapers. The meeting was held on the appointed day (the proceedings whereof were exhibited as Ex. 64 in Samudayam suit), at which, the third Catholicos, Mar Basselios Geevarghese II was elected as Malankara Metropolitan. The draft constitution was also adopted at the said meeting.

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117. The Constitution was amended in 1951 and again in 1967. When the 1951 amendments were made, the judgment of the Travancore High Court dated August 8, 1946 was holding the field whereunder the Catholicos group were declared as strangers to the Malankara Church. For that reason, it appears, none of the members of the Patriarch group participated in effecting the said amendments.

#### *Samudayam Suit*

118. On 5-7-1935 the Metropolitans of the Patriarchal party issued notice summoning a meeting of the church representatives for

22-8-1935 at Karingasseral to elect the Malankara Metropolitan. The notice stated that none of the persons belonging to Catholicos party should be elected. The meeting was accordingly held on 22-8-1935 whereat Mar Poulouse Athanasius was elected as the Malankara Metropolitan. The meeting purported to remove the trustees elected at the Meeting held on 26-12-1934 (i.e., Mani Poulouse Kathanar and E.J. Joseph, belonging to Catholicos group) and appointed two other persons in their place. Having done this, the Patriarch group (plaintiffs appellants in C.M.A. 74 of 1107 pending in the High Court) allowed the appeal to be dismissed for non-prosecution.

119. The Patriarch group then instituted, on 10-3-1938, O.S.No.111 of 1113 in the District Court of Kottayam (hereinafter referred to as "the Samudayam Sult") for a declaration of their title as trustees of the Samudam properties (common properties) of the Malankara Church and for a further declaration that the defendants to that suit (belonging to Catholicos group) were not lawful trustees and for possession of the trust properties. Certain ancillary reliefs were also asked for. The plaintiffs in the said suit based their title on the proceedings of the Karingasseral meeting aforesaid, whereat the plaintiffs therein were elected as Malankara Metropolitan and co-trustees and the trustees belonging to Catholicos group (defendants to the suit) were removed. The suit was dismissed by the Trial Court on 18-1-1943, against which the plaintiffs therein preferred an appeal to the Travancore High Court being A.S.No.1 of 1119. On 8-8-1946 the appeal was allowed and the suit decreed by a majority of Judges (2:1). The defendants (Catholicos group) thereupon applied for review which was rejected. The matter was carried to this Court in Civil Appeal No.193 of 1952 which was allowed on 21-5-1954. This court directed the High Court to re-hear A.S.No.1 of 1119 on all the points. Accordingly, the High

Court took up the appeal for hearing and allowed the same by its judgment dated 13-12-1956. The suit was decreed accordingly. On a certificate being granted by the High Court, the defendants (catholicos group) filed an appeal in this Court which was allowed on 12-9-1958 [reported in *Moran Mar Bassellos Catholicos v. Thukalan Paulo Avira* [A.I.R. 1959 SC 31].

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3. Thereafter, in the year 1979, the Catholicos filed O.S.No.4/1979 *inter alia* praying that Malankara Church be declared episcopal in character, and that it is governed in its administration by the Constitution of the Malankara Church. The Catholicos sought for a further declaration that no metropolitan, priest or deacon can officiate in any of the Malankara Churches unless appointed under the 1934 Constitution. The proceedings initiated by the Catholicos culminated in the decision of the Supreme Court in *Most Rev. P.M.A. Metropolitan v. Moran Mar Marthoma and another* [1995 Supp (4) SCC 286], which held that the power and authority of the Catholicos was affirmed in Kalpana A-13 and A-14 and was re-enforced and enlarged in the 1934 Constitution. It was held that the 1934 Constitution is applicable to Malankara Church and its Parish Church and Organisations, recognising that the Catholicos/Malankara Metroploitan has control over both spiritual and communal affairs of the Malankara Church. It was further held that the Patriarch group cannot question the legality and validity of the 1934 Constitution. Further directions were then issued for amendment of Clause 68 of the Constitution to bring about proportionate representation based on the size of the congregation of each of the

Constituent Parish Churches.

4. It is relevant to note that, while directing the amendment of the 1934 Constitution, the Supreme Court also directed that an election should take place within three months on the basis of Articles 71 and 46 of the amended Constitution. Until a new managing committee was elected, the *Status quo* was also directed to be maintained. As regards the interim arrangement that was permitted in respect of the Metropolitans, vicars etc. who had been ordained by the different factions pending the final decision in the matter, the Supreme Court in *Most Rev. P.M.A. Metropolitan v. Moran Mar Marthoma Mathews* [(1997) 10 SCC 614] directed that any and every person claiming to hold any office or posts in the Malankara Church would be bound by, and should swear allegiance to, the 1934 Constitution. The Court also extended the time to hold elections till 30.4.1997.

5. The judgment in *Most Rev. P.M.A. Metropolitan v. Moran Mar Marthoma* [1995 Supp (4) SCC 286] was implemented in execution proceedings before this Court. The Catholicos group claimed that elections had already been held, and hence, the execution was complete. This fact, however, was disputed by the Patriarch group. While this Court did not go into the question whether the decree stood complied with by holding elections, it concluded that *Moran Mar Marthoma Mathews* of the Catholicos group had not been elected as the Malankara Metropolitan.

6. The judgment dated 6.4.2001 of this Court in A.S.No.331/1980 was set aside by the Supreme Court through a consent order dated 28.11.2001, and the Court directed fresh elections to be conducted to the Malankara Association, under the supervision of Justice V.L.Malimath, retired Chief Justice of this Court. By a separate order dated 12.7.2002 in C.A.No.8185/2001 - *Moran Mar Thoma Mathews v. Most. Rev. Thomas Mar D. Metropolitan and Others [(2017) 15 SCC 518]*, the Supreme Court observed that the Association so elected pursuant to the judgment in *Most Rev. P.M.A. Metropolitan v. Moran Mar Marthoma [1995 Supp (4) SCC 286]* and the consent order dated 28.11.2001 *Moran Mar Thoma Mathews v. Most Rev. Thomas Mar D. Metropolitan [(2017) 15 SCC 520]* shall be the association for all purposes within the meaning of, and for the purposes of, the 1934 Constitution, as amended.

7. The Malankara Association, as constituted by the order of the Supreme Court, having decided vide majority that *Moran Mar Baselios Mar Thoma Mathews II* is the Malankara Metropolitan, the said decision was declared as final and binding and not subject to challenge in any court or other forum.

8. The Patriarch group, which was apparently not satisfied with the said state of affairs, tried to form its own Constitution, and the same was registered on 15.7.2002 with retrospective effect from 5.7.2002. Taking note of the order passed by the Supreme Court on 12.7.2002, however, the Patriarch proceeded to consecrate his own Malankara Metropolitan and Catholicos and they abstained from participating

9. Disputes subsequently arose relating to the three churches at *Kolenchery*, *Varikoli* and the *Mannathoor* and the Civil Suits filed in representative capacities in respect of the said Churches, culminated in the judgment of the Supreme Court in *K.S. Varghese and Others v. Saint Peter's and Saint Paul's Syrian Orthodox Church and Others* [(2017) 15 SCC 333]. The conclusions drawn by the Supreme Court in the said case are to be found at paragraph 228 of the judgment, which reads as under:

228. Resultantly, based on the aforesaid findings in the judgment, our main conclusions, inter alia, are as follows :

228.2. The decree in the 1995 judgment is completely in tune with the judgment. There is no conflict between the judgment and the decree.

**228.3. The 1995 judgment arising out of the representative suit is binding and operates as res judicata with respect to the matters it has decided, in the wake of provisions of Order 1 Rule 8 and Explanation 6 to Section 11 CPC. The same binds not only the parties named in the suit but all those who have interest in the Malankara Church. Findings in earlier representative suit, i.e., Samudayam suit are also binding on Parish Churches/Parishioners to the extent issues have**

been decided.

228.4. As the 1934 Constitution is valid and binding upon the Parish Churches, it is not open to any individual Church, to decide to have their new Constitution like that of 2002 in the so-called exercise of right under Articles 25 and 26 of the Constitution of India. It is also not permissible to create a parallel system of management in the churches under the guise of spiritual supremacy of the Patriarch.

228.5. The Primate of Orthodox Syrian Church of the East is Catholicos. He enjoys spiritual powers as well, as the Malankara Metropolitan. Malankara Metropolitan has the prime jurisdiction regarding temporal, ecclesiastical and spiritual administration of Malankara Church subject to the riders provided in the 1934 Constitution.

228.6. Full effect has to be given to the finding that the spiritual power of the Patriarch has reached to a vanishing point. Consequently, he cannot interfere in the governance of Parish Churches by appointing Vicar, Priests, Deacons, Prelates (High Priests) etc. and thereby cannot create a parallel system of administration. The appointment has to be made as per the power conferred under the 1934 Constitution on the Diocese, Metropolitan etc. concerned.

228.7. Though it is open to the individual member to leave a Church in exercise of the right not to be a member of any Association and as per Article 20 of the Universal Declaration of Human Rights, the Parish Assembly of the Church by majority or otherwise cannot decide to move church out of the Malankara Church. Once a trust, is always a trust.

228.8. When the Church has been created and is for the benefit of the beneficiaries, it is not open for the beneficiaries, even by a majority, to usurp its property or management. The Malankara Church is in the form of a trust in which, its properties have vested. As per the 1934 Constitution, the Parishioners though may individually leave the Church, they are not permitted to take the movable or immovable properties out of the ambit of 1934 Constitution without the approval of the Church hierarchy.

228.9. The spiritual power of Patriarch has been set up by the appellants clearly in order to violate the mandate of the 1995 judgment

of this Court which is binding on the Patriarch, Catholicos and all concerned.

228.10. As per the historical background and the practices which have been noted, the Patriarch is not to exercise the power to appoint Vicar, Priests, Deacons, Prelates etc. Such powers are reserved to other authorities in the Church hierarchy. The Patriarch, thus, cannot be permitted to exercise the power in violation of the 1934 Constitution to create a parallel system of administration of Churches as done in 2002 and onwards.

228.11. This Court has held in 1995 that the unilateral exercise of such power by the Patriarch was illegal. The said decision has also been violated. It was only in the alternative this Court held in the 1995 judgment that even if he has such power, he could not have exercised the same unilaterally which we have explained in this judgment.

228.12. It is open to the Parishioners to believe in the spiritual supremacy of Patriarch or apostolic succession but it cannot be used to appoint Vicars, Priests, Deacons, Prelates etc. in contravention of the 1934 Constitution.

228.13. Malankara Church is Episcopal to the extent as provided in the 1934 Constitution, and the right is possessed by the Diocese to settle all internal matters and elect their own Bishops in terms of the said Constitution.

228.14. Appointment of Vicar is a secular matter. There is no violation of any of the rights encompassed under Articles 25 and 26 of the Constitution of India, if the appointment of Vicar, Priests, Deacons, Prelates (High Priests) etc. is made as per the 1934 Constitution. The Patriarch has no power to interfere in such matters under the guise of spiritual supremacy unless the 1934 Constitution is amended in accordance with law. The same is binding on all concerned.

228.15. Udampadies do not provide for appointment of Vicar, Priests, Deacons, Prelates etc. Even otherwise once the 1934 Constitution has been adopted, the appointment of Vicar, Priests, Deacons, Prelates (High priests) etc. is to be as per the 1934 Constitution. It is not within the domain of the spiritual right of the Patriarch to appoint Vicar, Priests etc. The spiritual power also vests in the other functionaries of Malankara Church.



228.16. The functioning of the Church is based upon the division of responsibilities at various levels and cannot be usurped by a single individual howsoever high he may be. The division of powers under the 1934 Constitution is for the purpose of effective management of the Church and does not militate against the basic character of the Church being Episcopal in nature as mandated thereby. The 1934 Constitution cannot be construed to be opposed to the concept of spiritual supremacy of the Patriarch of Antioch. It cannot as well, be said to be an instrument of injustice or vehicle of oppression on the Parishioners who believe in the spiritual supremacy of the Patriarch.

228.17. The Church and the cemetery cannot be confiscated by anybody. It has to remain with the Parishioners as per the customary rights and nobody can be deprived of the right to enjoy the same as a Parishioner in the Church or to be buried honourably in the cemetery, in case he continues to have faith in the Malankara Church. The property of the Malankara Church in which is also vested the property of the Parish Churches, would remain in trust as it has for the time immemorial for the sake of the beneficiaries and no one can claim to be owners thereof even by majority and usurp the Church and the properties.

228.18. The faith of Church is unnecessarily sought to be divided vis-à-vis the office of Catholicos and the Patriarch as the common faith of the Church is in Jesus Christ. In fact an effort is being made to take over the management and other powers by raising such disputes as to supremacy of Patriarch or Catholicos to gain control of temporal matters under the garb of spirituality. There is no good or genuine cause for disputes which have been raised.

228.19. The authority of Patriarch had never extended to the government of temporalities of the Churches. By questioning the action of the Patriarch and his undue interference in the administration of Churches in violation of the 1995 judgment, it cannot be said that the Catholicos faction is guilty of repudiating the spiritual supremacy of the Patriarch. The Patriarch faction is to be blamed for the situation which has been created post 1995 judgment. The property of the Church is to be managed as per the 1934 Constitution. The judgment of 1995 has not been respected by the Patriarch faction which was binding on all concerned. Filing of writ petitions in the High Court by the Catholicos faction was to deter the Patriarch/his representatives to appoint the

Vicar etc. in violation of the 1995 judgment of this Court.

228.20. The 1934 Constitution is enforceable at present and the plea of its frustration or breach is not available to the Patriarch faction. Once there is Malankara Church, it has to remain as such including the property. No group or denomination by majority or otherwise can takeaway the management or the property as that would virtually tantamount to illegal interference in the management and illegal usurpation of its properties. It is not open to the beneficiaries even by majority to change the nature of the Church, its property and management. The only method to change management is to amend the Constitution of 1934 in accordance with law. It is not open to the Parish Churches to even frame bye-laws in violation of the provisions of the 1934 Constitution.

228.21. The Udampadies of 1890 and 1913 are with respect to administration of Churches and are not documents of the creation of the Trust and are not of utility at present and even otherwise cannot hold the field containing provisions inconsistent with the 1934 Constitution, as per Section 132 thereof. The Udampady also cannot hold the field in view of the authoritative pronouncements made by this Court in the earlier judgments as to the binding nature of the 1934 Constitution.

228.22. The 1934 Constitution does not create, declare, assign, limit or extinguish, whether in present or future any right, title or interest, whether vested or contingent in the Malankara Church properties and only provides a system of administration and as such is not required to be registered. In any case, the Udampadies for the reasons already cited, cannot supersede the 1934 Constitution only because these are claimed to be registered.

228.23. In otherwise Episcopal Church, whatever autonomy is provided in the Constitution for the Churches is for management and necessary expenditure as provided in Section 22 etc.

228.24. The formation of 2002 Constitution is the result of illegal and void exercise. It cannot be recognized and the parallel system created thereunder for administration of Parish Churches of Malankara Church cannot hold the field. It has to be administered under the 1934 Constitution.

228.25. It was not necessary, after amendment of the plaint in Mannathur Church matter, to adopt the procedure once again of representative suit under Order 1 Rule 8 CPC. It remained a representative suit and proper procedure has been followed. It was not necessary to obtain fresh leave.

228.26. The 1934 Constitution is appropriate and adequate for management of the Parish Churches, as such there is no necessity of framing a scheme under Section 92 CPC.

228.27. The plea that in face of the prevailing dissension between the two factions and the remote possibility of reconciliation, the religious services may be permitted to be conducted by two Vicars of each faith cannot be accepted as that would amount to patronizing parallel systems of administration.

228.28. Both the factions, for the sake of the sacred religion they profess and to pre-empt further bickering and unpleasantness precipitating avoidable institutional degeneration, ought to resolve their differences if any, on a common platform if necessary by amending the Constitution further in accordance with law, but by no means, any attempt to create parallel systems of administration of the same Churches resulting in law and order situations leading to even closure of the Churches can be accepted.

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The aforesaid decision in *K.S. Varghese and Others v. Saint Peter's and Saint Paul's Syrian Orthodox Church and Others* [(2017) 15 SCC 333] has subsequently been endorsed by the Supreme Court in *Mathews Mar Koorilos (Dead) and Another v. M. Pappy (Dead) and Another* [(2018) 9 SCC 672].

10. We have narrated the litigation history in some detail here only so that the issues in these writ petitions can be appreciated in the backdrop of the past

events. The writ petitions are preferred by persons of the Orthodox faction seeking police protection for enabling Vicars, duly appointed by Diocesan Metropolitans in accordance with the 1934 Constitution, to discharge their spiritual and managerial duties at the respective churches, without being obstructed by the respondents therein who are stated to belong to the Patriarch faction.

11. During the course of arguments in these writ petitions, we had asked Counsel for both sides to take us through the various decisions of the Supreme Court, as detailed above, so as to attempt an amicable resolution of the immediate disputes between the two factions, in the light of the declaration of law by the Supreme Court. We notice that, pursuant to the order of the Supreme Court in 2001, the Catholicos was duly elected in accordance with the 1934 Constitution and thereafter, a new committee was elected to take decision as to who, among the various Diocesan Metropolitans, Vicars, Priests, Prelates etc. that were appointed by either faction during the pendency of the dispute before the Supreme Court, and who were allowed to continue as such in the Interregnum, should be recognized as the real incumbent to the post. The resolution of the elected committee reveals that only those whose names have been specifically mentioned in the said resolution are recognised as validly ordained Diocesan Metropolitans, Vicars, Prelates, Priests etc. Resultantly, all others who may have been ordained as such, during the pendency of the lis before the Supreme Court, no longer have the authority to continue as Diocesan Metropolitans, Vicars, Prelates, Priests etc of the Malankara Syrian Christian Church. This is because their very ordainment was subject to the outcome of the lis,

and on its culmination, the declaratory judgment rendered their very ordainment, a legal nullity.

12. In the course of arguments in these writ petitions, another vital aspect relating to the parishioners, that was brought to our notice is that there have been instances where parishioners of a particular church, who owe allegiance to the Patriarch faction, have been denied their right to bury their family members, in the space allotted for burial of their family members in the cemetery attached to the church concerned. This, in our view, would not be in accordance with the declaration of the Supreme Court in the cases referred above. As observed by the Supreme Court in *paragraph 228.17* in *K.S. Varghese's case* [supra], the Church and the cemetery cannot be confiscated by anybody. It has to remain with the Parishioners as per the customary rights and nobody can be deprived of the right to enjoy the same as a Parishioner in the Church or to be buried honourably in the cemetery, in case he continues to have faith in the Malankara Church. The property of the Malankara Church in which is also vested the property of the Parish Churches, would remain in trust as it has for time immemorial for the sake of the beneficiaries and no one can claim to be owners thereof even by majority and usurp the Church and the properties. Accordingly, so long as the person claiming a right to burial continues to be a parishioner of the church, and his/her name is not removed from the register of parishioners of the church pursuant to a due process of law, the mere fact of allegiance of the Parishioner to the Patriarch, who is admittedly the spiritual head of

the Malankara Church even as per the 1934 Constitution, or his/her inclination to the ideology of the Patriarch faction, cannot deprive the parishioner of his/her right to burial in the church of which he/she is the parishioner. This right cannot be taken away even if, in particular circumstances, the parishioner chooses to forego funeral services in the church or its cemetery or opts for a funeral service at any other premises by a priest of his/her choice. The right to a burial in the cemetery must be seen as flowing from his status as a Parishioner of the Church.

We shall now deal with the individual cases before us.

**W.P.(C).No.33282/2018:**

13.1. This writ petition is filed by the St.Mary's Orthodox Church (Kattachira Palli), and its Vicar, (Rev. Fr.Johns Eapen) who are arrayed as petitioners 1 and 2, seeking a direction to the Police authorities of the State to render adequate and sufficient police protection to the life of the 2<sup>nd</sup> petitioner and other Clergy members including Vicars, Priests, Deacons, Prelates, Metropolitans and the Catholicos of the Malankara Orthodox Church appointed under the 1934 Constitution, to conduct religious services in the 1<sup>st</sup> petitioner Church, its cemetery and kurishadies, and the parishioners of the 1<sup>st</sup> petitioner Church, who declare allegiance to the 1934 Constitution, in participating in such religious services without any obstruction from respondents 11 to 17, their men, agents or followers of Jacobite faction and anybody claiming under them. The respondents 1 to 10, as already noticed, are officials of

the State Government including the Police authorities, and respondents 11 to 17 are members of the Clergy as also parishioners owing allegiance to the Patriarch faction.

13.2. In the writ petition, the petitioners trace their legal right in respect of the management of the Church property, as also the right to conduct religious services therein, to the proceedings that were initiated before the Sub Court, Mavelikkara through O.S.No.6/1976 [later renumbered as O.S.No.187/1977]. The said Suit was one preferred on behalf of the Orthodox faction, in a representative capacity, seeking a declaration that the Church and its properties were gifted to the Diocesan Metropolitan of Kollam Diocese, and that the Vicar appointed in accordance with the 1934 Constitution alone is entitled to function as the 'Vicar' of the Church, and all others are to be enjoined from functioning as Vicars. Before the same Court, O.S.No.17/1976 also came to be filed by members belonging to the Patriarch faction challenging the validity of the gift deed in favour of the Diocesan Metropolitan, and seeking a declaration that the Church and its properties belonging to the parishioners.

13.3. The suits were disposed by judgment dated 6.3.1986, whereunder, O.S.No.187/1977 was decreed, and O.S.No.17/1976 was dismissed.

13.4. This led the Patriarch faction to prefer Appeals, namely, A.S.Nos.140/1986 and 142/1986 against the common judgment dated 6.3.1986 of the Sub Court, Mavelikkara. While the appeals were pending before this Court, the 2<sup>nd</sup> petitioner was appointed as Vicar of the Church pursuant to Ext.P2 order dated 4.10.1994 in A.S.No.142/1986. The appointment of the 2<sup>nd</sup> petitioner as Vicar was also approved through Ext.P3 Kalpana issued by the Diocesan Metropolitan.

13.5. The Appeals were later dismissed by judgment dated 17.6.1996, and against the said judgment, further Appeals – A.F.A.Nos.26/1997 and 27/1997 were preferred before a Division Bench of this Court by the Patriarch faction. The said Appeals were allowed by the Division Bench vide judgment dated 4.4.2000, which categorically held that the Church and its properties belonged to the Parishioners, and it was with their consent alone that the Vicar could be appointed.

13.6. In the resultant Appeals preferred by the Orthodox faction against the judgment of the Division Bench in the A.F.As aforementioned, the Supreme Court, by judgment dated 28.4.2018 [*Mathews Mar Koorilos (Dead) and Another v. M. Pappy (Dead) and Another* [(2018) 9 SCC 672]] allowed the Appeals following its earlier decision in *K.S. Varghese and Others v. Saint Peter's and Saint Paul's Syrian Orthodox Church and Others* [(2017) 15 SCC 333]. In the judgment dated 28.4.2018, the Supreme Court found that inasmuch as the 1934 Constitution is binding upon the Parish Church and its parishioners, the Division Bench of this Court erred in holding that the Metropolitan had no power to appoint Vicar, Priest etc. The conclusion of the Division Bench that the parishioners have the right to make all such appointments and to manage the affairs of the St.Mary's Church was held directly contrary to the express provisions of the 1934 Constitution, and the findings of the Supreme Court in *Most Rev. P.M.A. Metropolitan and Others v. Moran Mar Marthoma and another* [1995 Supp (4) SCC 286]. The findings of the Trial court and the Single Judge that the St.Mary's Church is a constituent of Malankara, and the power to appoint Vicar, Priest etc. is vested with the Malankara Metropolitan or its representatives, was upheld by the Supreme Court.



14.1. It is on the basis of the aforesaid findings rendered by the Supreme Court, in the Appeal preferred against the judgments of the courts below, that the petitioners now claim that respondent No.13 (Fr. Roy George), who is presently functioning as a Vicar in the 1<sup>st</sup> petitioner Church, cannot continue to do so, and must give way to the 2<sup>nd</sup> petitioner (Rev. Fr. Johns Eapen), who has been ordained by the Diocesan Metropolitan duly recognised by the Catholicos in accordance with the 1934 Constitution. The plea for police protection is made in the wake of alleged incidents that occurred in the Church when the 2<sup>nd</sup> petitioner attempted to enter the Church, for the purposes of conducting religious services. It is stated that respondents 11 to 17 obstructed the 2<sup>nd</sup> petitioner from conducting religious services.

14.2. Detailed counter affidavits have been filed on behalf of respondents 13, 15, 16 and 17 as also by the official respondents of the State Government. In the affidavit filed on behalf of respondents 13, 15, 16 and 17, the stand taken is that the writ petition is one that attempts to seek execution of the judgment of the Supreme Court, in the guise of seeking police protection. It is pointed out that there were many FIRs registered in connection with the violent incidents that occurred in and around the Church premises, and the suggestion that the violent acts were committed only by members of the Patriarch faction, is denied. After referring to the litigation that culminated in the judgment of the Supreme Court, it is pointed out that due importance and weightage ought to be given to the parishioners of the Church,

especially when the Parish register maintained in the Church would reveal that more than 95% of the parishioners belong to the Patriarch faction. The objection of the majority of the parishioners is stated to be with regard to the functioning of the 2<sup>nd</sup> petitioner (Rev. Fr. Johns Eapen) as Vicar, more so since, he belongs to the Orthodox faction, the ideology of which is not aligned to that of the members of the Patriarch faction. In a separate counter affidavit filed on behalf of the 14<sup>th</sup> respondent, reference is made to the provisions of the Supreme Court Rules, 2013, to suggest that the petitioners would have to formally execute the judgment of the Supreme Court in the Appeal preferred by them, and the execution of the directions in the judgment of the Supreme Court cannot be sought through a writ petition filed for police protection.

14.3. In the affidavit filed on behalf of the State Government, reference is made to the disputes that arose in the Church premises and the crimes registered against various persons pursuant thereto. In particular, it is pointed out that, on 16.9.2018, one Saramma, aged 94, who belonged to the Patriarch faction, expired, and when attempts were made to conduct the burial at the Church cemetery along with a Priest belonging to the Patriarch Faction, disputes arose between the two factions, which necessitated the summoning of the R.D.O., Chengannur and Tahsildar, and thereafter the burial could take place only after imposing restrictions on the Priest belonging to the Patriarch faction. It is stated that the District Collector had, by an order dated 27.9.2018, extended the earlier order passed under Section 144 of the Code of Criminal Procedure, taking note of the violent situation near the Church Premises.

14.4. During the course of arguments before us, it came out that after the incidents that necessitated the approach to this Court for police protection, no further incidents have occurred, and the situation at the moment is peaceful. As already noted above, one of the reasons which appears to be the cause for objections/reservations by those parishioners who belong to the Patriarch faction, is that, the bodies of their relatives are not permitted burial in the Church cemetery, without them first submitting to the conduct of a religious ceremony by a Priest of the Orthodox faction. We have already dealt with the legality of such situations in an earlier part of this judgment, where, we have noticed the directions of the Supreme Court in *K.S. Varghese* (Supra), which prohibited the confiscation of the cemetery or the appropriation of the same by any faction. In the light of the directions already issued in the earlier part of this judgment, including the clarification with regard to the persons who can function legally as Vicar of the Church, and taking note of the present peaceful situation prevailing in the Church, we deem it appropriate to close the Writ petition in the light of the directions issued in the earlier part of this judgment, and making it clear that in the event of any violation of the directions in this judgment, resulting in a law and order situation in the Church premises, it would be open to the petitioners to approach the Police authorities for protection, in which event, the Police authorities shall act based on the observations made in this judgment.

14.5. By way of abundant caution, and with a view to prevent any further ambiguity, we might clarify that, vis-a-vis, the 2<sup>nd</sup> petitioner (Rev. Fr. Johns Eapen)

and the 13<sup>th</sup> respondent (Fr. Roy George), both of whom claim to be Vicars functioning in the Church, it is the 2<sup>nd</sup> petitioner alone, who can validly claim ordainment as a Vicar by the Diocesan Metropolitan recognised under the 1934 Constitution, as seen from the Minutes of the meeting of the Managing Committee of the Malankara Association held on 9<sup>th</sup> and 10<sup>th</sup> of August, 2002.

14.6. As regards the continuance of the 14<sup>th</sup> respondent as trustee in the Parish Committee, the said arrangement shall not be disturbed till such time as new trustees are appointed pursuant to a valid election held for the same.

**W.P.(C).No.16248/2018**

15.1. The St.Mary's Orthodox Church, Varikoli and its Vicar and trustees are the petitioners in this writ petition, where the prayer is for a direction to the State and the Police authorities to grant adequate and sufficient police protection to the Church and its properties including Chapel, Cemetery as also its Vicar, Parishioners for smooth conduct of religious services as well as administration of Church and its properties, without any obstruction from members of the Patriarch faction under the leadership of respondents 6 to 12, or their agents. While there is a reference in the writ petition to various crimes that were registered at the Puthencruze Police Station as also the Chottanikkara Police Station, in connection with alleged violent activities by members of the Patriarch faction, it is the definite stand of Sri.G.Keerthivas, the learned counsel appearing for respondents 6 to 12, that there is no obstruction caused to the petitioners by the said persons, and that their apprehensions were

only with regard to the petitioners respecting the burial rights of the parishioners.

15.2. In the light of the specific stand taken by respondents 6 to 12 before us, and taking note of the clarifications/directions issued in this judgment in connection with the right of persons, who can function as Vicars as also the burial rights of parishioners of Churches, we do not see any necessity for issuing any positive direction for police protection, save to observe that, in the event of any law and order situation arising, the police shall respond to any plea for police protection, if made by the petitioners herein, and shall afford adequate police protection in the event of them finding a breach by any person of the directions issued in this judgment. The writ petition is accordingly closed.

**W.P.(C).No.40172/2018:**

16.1. The petitioners in this writ petition are stated to be parishioners of the Piravom St.Mary's Jacobite Syrian Church, who were trustees of the said Church from 16.5.2004 to 21.10.2014, and stated to be functioning as per the 1934 Constitution. The prayer in the writ petition is for a direction to the 1<sup>st</sup> respondent State Government to take a decision on Ext.P4 representation preferred by them, taking note of the directions of the Supreme Court in *paragraph 228.28* in *K.S. Varghese and Others v. Saint Peter's and Saint Paul's Syrian Orthodox Church and Others* [(2017) 15 SCC 333].

16.2. When the matter came up for hearing along with the other Writ

petitions involving the same issue, it was submitted by the learned State Attorney on behalf of the State Government, that earnest steps have been taken by the State Government, through the Chief Minister, to bring the Patriarch as also the Catholicos to the negotiation table for bringing about an amicable resolution of the pending disputes between the rival factions of the Malankara Syrian Orthodox Church. We have also been shown copies of the communications issued to the Patriarch as also the Catholicos towards this end. In the light of the said communications shown to us, we find that steps have already been taken by the State Government towards brokering peace between the two rival factions, and hence, we do not deem it necessary to issue any further direction to the State Government. The writ petition is thus closed, by taking note of the steps taken by the State Government towards an amicable resolution of the disputes between the orthodox faction and the Patriarch faction of the Malankara Syrian Orthodox Church.

  
**HRISHIKESH ROY**  
**CHIEF JUSTICE**

  
**A.K.JAYASANKARAN NAMBIAR**  
**JUDGE**

prp/